



**California
Fair Political
Practices Commission**

SUPERSEDED
by: 92-119

March 16, 1989

David B. Cosgrove
Rutan and Tucker
Central Bank Tower, Suite 1400
South Coast Plaza Town Center
611 Anton Blvd.
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Your Request for Advice
Our File No. A-89-120

Dear Mr. Cosgrove:

This is in response to your letter requesting advice on behalf of the city council and planning commission of Signal Hill concerning their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} As discussed in our telephone conversation of March 2, 1989, this letter will respond to the first two questions raised in your request. The remaining three questions will be dealt with in a follow up letter.

QUESTIONS

1. May city council and planning commission members participate in a decision to amend a zoning definition where the decision will directly or indirectly affect real property which the members own?

2. May city council and planning commission members participate in decisions concerning proposed residential developments which will indirectly affect their real property interests?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. The Zoning Decision: Councilmembers Goehardt and Dare and Planning Commissioners McManus and Ross may not participate in the zoning decision unless they can show that there will be no financial effect on their real property interests. The rest of the city council and planning commission may participate.

2. The Development Decisions: Councilmembers Goehardt and Dare may not participate in the decisions concerning the developments unless they can show that there will be no financial effect on their real property interests. Since there will not be a financial effect of \$10,000 or more on their real property interest, Councilmembers Hanlon and all the planning commissioners may participate in the decisions regarding the development. However, Councilmember Ceccia may participate only if the rental value of the property he owns will not be affected by \$1,000 or more in a 12-month period. Based on the facts provided, Councilmember Blacksmith and Planning Commissioner Harris have no apparent conflicts of interest.

FACTS

The City of Signal Hill has a five-member city council and a five-member planning commission. All the city councilmembers and planning commissioners are required to reside within the city limits.

The planning commission and city council are considering the following proposals for the development of land in the south east section of the city.

1. Kaufman and Broad have proposed a 50-unit single family subdivision. The subdivision is currently zoned RL, which is low density residential. Kaufman and Broad have made the following requests to the planning commission:

a) Approval of the tentative tract map and site plan; and

b) A change in the zoning definition of all RL properties in the city to reduce required lot depth and raise permissible building height from 26 to 28 feet.

2. Spongberg Kirkland has proposed a 55-unit single family residential project across the street from the Kaufman and Broad development. They have requested approval of the tentative tract map and site plan.

The Kaufman and Broad zoning proposal must be approved by both the planning commission and city council to take effect. The other decisions described above are decided by the planning commission, and would come before the city council only if the decision of the planning commission is appealed by the developer or other interested party.

Signal Hill has a population of 8,423 people. It covers 2.25 square miles and contains 3,816 residential dwelling units in the city. Since the city lies in the middle of a major oil field, much of the land in the city is undeveloped. The property interests of the city councilmembers and planning commissioners are as follows:

Official

Property Interest

City Council:

- | | |
|----------------------|---|
| 1. Sara Hanlon | Condominium |
| 2. Gerard Goehardt | Condominium |
| 3. Louie Dare | Single-family residence |
| 4. Jessie Blacksmith | Single-family residence |
| 5. Richard Ceccia | a) Apartment rental (month-to-month) b) One-half owner single-family residence |

Planning Commission

- | | |
|--------------------|---|
| 1. Mike Noll | Condominium |
| 2. Jack McManus | Condominium |
| 3. Carol Churchill | Single-family residence |
| 4. Alan Ross | Condominium |
| 5. Richard Harris | Leasehold on one-half duplex (month-to-month) |

The property interests of Councilmembers Goehardt and Dare are within 300 feet of the boundaries of the development sites. The real property interests of Councilmembers Hanlon, Ceccia and all the planning commissioners are located between 300 to 2,500 feet of the sites. You stated in our telephone conversation of February 24, 1989, that you do not believe that the decisions regarding the developments would affect the fair market value of any of the officials' real property by \$10,000.

Councilmembers Goehardt and Dare and Planning Commissioners McManus and Ross own property zoned RL. The remaining city councilmembers and planning commissioners own property outside of RL zones. You stated in your letter that you do not believe there will be a foreseeable financial effect from the zoning decision on real property outside the RL zones.

In addition, the real property of Councilmembers Hanlon and Goehardt, and Planning Commissioners Noll, Ross and McManus are all developed with legal nonconforming structures. Under local ordinance these nonconforming uses may not be modified, altered or enlarged without losing the "legal nonconforming use" status. In our telephone conversation of March 8, 1989, you stated that you do not believe that there will be a financial effect on property zoned RL that is already developed with a nonconforming use.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

An interest in real property is defined in Section 82033 to include any leasehold, beneficial or ownership interest or an option to acquire such an interest if the fair market value is \$1,000 or more. The definitions of "interest in real property" and "leasehold interest" do not include the interest of a tenant in a periodic tenancy of one month or less. (Regulation 18233, copy enclosed.)

Members of the city council and planning commission are public officials. (Section 82048.) Nine of the ten members of the planning commission and city council have a real property interest worth more than \$1,000. Thus, each of these nine members is required to disqualify himself or herself from making or participating in a decision which would have a foreseeable, material financial effect on his or her real property that is distinguishable from the effect on the public generally.

Planning Commissioner Harris is a month-to-month tenant. A month-to-month tenancy does not constitute an interest in real property for the purposes of the Act. (Regulation 18233.) Thus, Commissioner Harris does not have a conflict of interest in any decision affecting the real property he rents.

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The Zoning Decision

Kaufman and Broad has requested a change in the zoning definition of all RL properties in the city. This change would

reduce required lot depth and raise permissible building height from 26 to 28 feet.

You have stated that properties which are not zoned RL will not be foreseeably financially affected by the RL zoning amendment. Based on this information we conclude that Councilmembers Blacksmith, Hanlon, Ceccia, and Planning Commissioners Noll, Harris, and Churchill, all of whom own property outside the RL zones, do not have a conflicting interest in the decision regarding the RL zone amendments because there will be no foreseeable financial effects on their real property interests. (In re Thorner, supra.)

Councilmembers Goehardt, Dare, McManus and Ross own real property that is zoned RL and would, therefore, be foreseeably and directly affected by the decision. Where a governmental decision concerns zoning, rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from a governmental subdivision and the public official resides in the zone, the effect of the decision is material. (Regulation 18702.1(a)(3)(A), copy enclosed.)

However, Regulation 18702.1(a)(3)(E) defines "zoning" decision to exclude "an amendment to an existing zoning ordinance ... which is applicable to all properties designated in that category." Here, since the decision involves changes within the definition of the particular zoning category applicable to all the properties designated in that category, the effect of the decision on the public officials' real property is deemed to be indirect for purposes of the materiality analysis.

The indirect effect of a decision on the real property interests of a public official that is within 300 feet of the property subject to the decision is material unless the decision will have no financial effect upon the official's real property interests. (Regulation 18702.3(a)(1), copy enclosed.)

Thus, Councilmembers Goehardt and Dare, and Planning Commissioners McManus and Ross are required to disqualify themselves from any participation in the zoning decision, unless they can show that the zoning decision will have no financial effect upon their real property interests.

For example, even if Councilmembers Goehardt and Dare, and Planning Commissioners McManus and Ross have no intention of taking advantage of the change in the zoning definition, future purchasers may decide to tear the structures down to take advantage of the change. Thus, while there is no foreseeable benefit to the current owners, the change may still foreseeably increase or decrease the fair market value of the property if it is sold. (In re Legan, (1985) 9 FPPC Ops. 1; Hill Advice Letter, No. A-87-110, copies enclosed.)

In addition, public officials with real property interests that will be financially affected by the decision may participate if the effect on their property is not distinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it would affect a significant segment of the public. (Regulation 18703, copy enclosed; In re Legan, supra.)

The "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) This is so because all the residents of the jurisdiction are constituents of the official. (In re Legan, supra.) Consequently, for the public generally exception to apply to this situation, the zoning decision must affect a significant segment of the population of Signal Hill in substantially the same manner as it would affect the public officials whose real property interests are zoned RL. (Dowd Advice Letter, No. A-88-214; Burnham Advice Letter, No. A-86-210, copies enclosed.)

Two hundred of the 3,816 residential dwelling units in the city are located in RL zones. This constitutes only 5% of the residential dwellings in the city. Such a small percentage does not constitute a significant segment of the population. (Scher Advice Letter, No. 88-479.) Thus, because a significant segment of the population will not be affected in the same manner as Councilmembers Goehardt and Dare, and Planning Commissioners McManus and Ross, the public generally exception does not apply.

In summary, Councilmembers Goehardt and Dare and Planning Commissioners McManus and Ross may not participate in the zoning decision unless they can show that there will be no financial effect on their real property interests. The other members of the city council and planning commission may participate.

The Development Decisions^{2/}

Kaufman and Broad has proposed a 50-unit single family subdivision and has applied to the planning commission for approval of the tentative tract map and site plan. Directly across the street from the Kaufman and Broad proposed development, Spongberg Kirkland has proposed a 55-unit single family residential project. They have also requested approval of the tentative tract map and site plan.

^{2/} The two developments are being dealt with together since they are immediately adjacent to one another and the distances concerned are approximately the same.

None of the councilmembers or planning commissioners live within the boundaries of either development area. However, the decisions concerning the proposed developments could foreseeably affect the property values of nearby property by changing traffic and noise levels. (Haight Advice Letter, No. A-88-432, copy enclosed.)

Councilmember Blacksmith's property, however, is more than 2,500 feet from the subject property. Absent special circumstances which make it reasonably foreseeable that the fair market value of the real property will be affected, Regulation 18702.3(b) permits Councilmember Blacksmith to participate in the development decisions. We are not aware of any special circumstances indicating that the decision regarding the developments will have a foreseeable effect on a single-family residence so far removed from the subject property.

Once again, for the other councilmembers and planning commissioners with interests in real property, Regulation 18702.3 provides guidelines as to whether the effect of a decision on the real property interest of a public official is material:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interests.

* * *

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Regulation 18702.3(a)(1)
and (3).

Councilmembers Goehardt and Dare own real property within 300 feet of the property that is the subject of the development decisions before their agency. Because of the close proximity of their real property to the subject property, there is a presumption that the financial effect on the councilmembers' real property interest will be material. This presumption may be rebutted by showing that there will be no financial effect on the official's real property interest. (Regulation 18702.3(a)(1); Phelps Advice Letter, No. A-88-429, copy enclosed.)

You have provided us with no facts to indicate that the real property of Councilmembers Goehardt and Dare would not be financially affected by the decisions concerning tentative tract maps and site plans for the proposed developments. Absent such information we conclude that both these councilmembers are required to disqualify themselves from participation in these decisions regarding the proposed development unless the effect on their property is not distinguishable from the effect on the public generally.

Councilmembers Hanlon and Ceccia and all the planning commissioners have real property interests that are between 300 and 2,500 feet from the subject property. They must disqualify themselves when the decisions regarding the developments could foreseeably increase or decrease the fair market value of their real property by \$10,000 or affect the rental value of their property by at least \$1,000 per 12-month period.

In our telephone conversation of February 24, 1989, you stated that you do not believe that the decisions regarding the developments would affect the fair market value of any of the officials' real property by \$10,000. Based on this fact, the public officials who own real property between 300 and 2,500 feet of the developments may participate in the decisions regarding the tentative tract map and site plan.

Councilmember Ceccia owns rental property within 2,500 feet of the proposed development areas. In the case of rental property, the effect of a decision is material if the rental value of the property is affected by \$1,000 per 12-month period. Thus, if the decisions concerning the tract map and site plan will increase or decrease the rental value of the councilmember's rental property by \$1,000 or more per year, he must disqualify himself from any participation in those decisions. We do not have any information about the effect of the decisions on rental property values; therefore, we must leave this determination to you and Councilmember Ceccia.

A final consideration is whether the decisions on the developments will affect Councilmembers Goehardt and Dare, who own property within 300 feet of the developments, in a manner that is distinguishable from the effect on the public generally. (Regulation 18703.)

While Signal Hill is a small community, the segment affected by the development decisions is still a relatively small percentage of the public. Councilmembers Goehardt and Dare would have to show that the segment of the population living within 300 feet of the developments was significant. However, the 325 dwelling units within 300 feet of the developments is only 9% of the total 3,400 dwelling units in the city. While those residing within 300 feet of the developments might be heterogeneous, they would not be large enough in number to constitute a significant segment. (In re Ferraro, (1978) 4 FPPC Ops. 62; Flynn Advice Letter, No. I-88-430, copies enclosed.)

To summarize, Councilmembers Goehardt and Dare may not participate in the decisions concerning the developments unless they can show that there will be no financial effect on their real property interests. Since their real property interests will not be materially affected, Councilmembers Hanlon, and all the planning commissioners may participate in the decision regarding the proposed developments. Councilmember Ceccia may participate only if the rental value of the property he owns will not be affected by \$1,000 or more in a 12-month period. Based on the facts provided, Councilmember Blacksmith and Planning Commissioner Harris have no apparent conflicts of interest concerning the development decisions.

Legally Required Participation

The city council and planning commission are made up of five members each. Because most of the officials own property in or near the properties subject to the development and zoning decisions, you are concerned that the disqualification of members may leave the city council or planning commission without a quorum. Absent a quorum neither body may act.

Section 87101 permits participation by a disqualified public official to the extent that his or her participation is legally required. Regulation 18701 (copy enclosed) clarifies "legally required participation" as follows:

(a) A public official is not legally required to make or participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall:

(1) Disclose as a matter of official public record the existence of financial interest;

(2) Describe with particular the nature of the financial interest before he or she makes or participates in making the decision;

(3) Attempt in no way to use his or her official position to influence any other public official with respect to the matter;

(4) State the reason there is no alternative source of decision-making authority;

(5) Participate in making the decision only to the extent that such participation is legally required.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Government Code Section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.

(Emphasis added.)

If the planning commission or city council needs a quorum of three to act on decisions and three of the five members are disqualified, one member could be chosen to participate from the three disqualified members by a method of random selection, such as drawing lots. (In re Brown (1978) 4 FPPC Ops. 19; In re Hudson (1978) 4 FPPC Ops. 13; Skousen Advice Letter, No. A-88-162, copies enclosed.) However, if only two members are disqualified, the body maintains its quorum from the three other members, and neither disqualified member may participate. This is true even if

David B. Cosgrove
March 16, 1989
Page 11

non-disqualified members are not present at the time of the decision to participate. (Griffin Advice Letter, No. A-81-08-076, copy enclosed.)

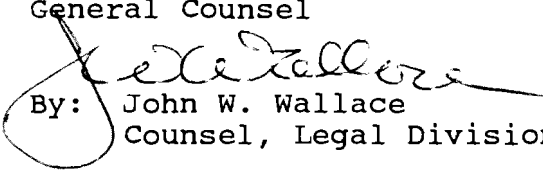
If it is determined that a disqualified public official is legally required to participate, Regulation 18701(b) sets forth the procedure to be followed when a disqualified official is legally required to participate.

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By:


John W. Wallace
Counsel, Legal Division

DMG:JWW:plh

Enclosures

89 180

The analysis in this letter pertaining to Regulation
18702.1(a)(3)(E) has been superseded by the Krauel Advice Letter,
No. I-92-119.

RUTAN & TUCKER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CENTRAL BANK TOWER, SUITE 1400

SOUTH COAST PLAZA TOWN CENTER

611 ANTON BOULEVARD

POST OFFICE BOX 1950

COSTA MESA, CALIFORNIA 92628-1950

A. W. RUTAN 1960-1971
JAMES B. TUCKER, SR. 1988-1990
MILFORD W. DAHL, SR. 1989-1988
H. RODGER HOWELL 1925-1983

TELEPHONE (714) 641-5100
(213) 625-7586

TELECOPIER (714) 546-9035

TELEX 910 696-1883

CABLE ADDRESS RUTAN TUC CSMA

February 24, 1989

IN REPLY PLEASE REFER TO

GARVIN T. BHALLENDERGER*
JAMES R. MOORE*
WILLIAM R. BIEL
RICHARD A. CURNUTT
LEONARD A. HAMPEL
JOHN B. HURLBUT, JR.
MICHAEL W. IMMELL
MILFORD W. DAHL, JR.
THEODORE J. WALLACE, JR.*
RONALD P. ARRINGTON*
RICHARD P. SIMS
MARSHALL M. PEARLMAN*
ROBERT C. BRAUN
ROGER A. GRABLE*
EDWARD D. STRESMA, JR.*
THOMAS S. SALINGER*
ROBERT W. ALBERTS
WILLIAM V. SCHMIDT*
DAVID C. LARSEN*
CLIFFORD E. FRIEDEN
MICHAEL D. PUBIN
IRA G. RIVIN*
JEFFREY M. CORDERMAN*
JOSEPH D. CARRUTH
STAN WOLCOTT*
ROBERT S. BOWER
DAVID J. ALESHIRE
MARC A. A. FORSYTH
WILLIAM M. MARTICORENA
JAMES L. MORRIS
ANNE NELSON LANPHAR
WILLIAM J. CAPLAN
MICHAEL T. HORNAK
JANICE L. CELOTTI
PHILIP D. KOHN
JOEL D. KUPERBERG
STEVEN A. NICHOLS
THOMAS G. BROCKINGTON
WILLIAM W. WYNDER
EVRIDIKI IVICKII DALLAS
RANDALL M. DABBUSH
MARY M. GREEN
PHILIP M. PRINCE
JOHN L. FELLOWS III
DAVID H. HOCHNER

MARK B. FRAZIER
KARIN T. KROGIUS
THOMAS J. CRANE
BRUCE A. EMARD
JAMES J. LITTLE
DUKE F. WATQUIST
M. KATHERINE JENSON
JANET L. MACLACHLAN
SCOTT R. PINZONE
MARY K. RAMSDEN
RICHARD K. MONTEVIDEO
DAVID B. COSGROVE
MARK SMITH FLYNN
CAROLE STEVENS
LORI SARNER SMITH
JAMES P. FINERTY
ERNEST W. KLATTE, III
ELIZABETH M. COWLES
KIM D. THOMPSON
JAYNE DANOWSKY TAYLOR
JEFFREY WERTHEIMER
HANS VAN LIGTEN
MATTHEW K. ROSS
MICHAEL D. TURNER
ANDREA R. CALEM
J. RUSSELL TYLER, JR.
ROBERT O. OWEN
BARRY L. ADAMS
ADAM N. VOLKERT
JEFFREY A. GOLDFARB
SANFORD SHATZ
PATRICK K. HANLEY
CARL J. THOMAS
STEVEN W. SPRECHER
ROBERT YONOWITZ
RONI D. JACKSON
MATTHEW P. SEEBERGER
MELANIE C. EYRE
CHESTER A. PUCHALSKI
F. KEVIN BRAZ L.
ROBYN L. MOSMAN
LAYNE H. MELZER
PATRICK K. RAFFERTY
DANA B. TASCHNER
L. SKI HARRISON

*A PROFESSIONAL CORPORATION

Mr. John Wallace
California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95814-0807

Dear Mr. Wallace:

This letter is written in response to your telephonic inquiries of February 24, 1989.

The references to the "tentative tract map" in our recent request for advice relate to California Subdivision Map Act, Government Code Section 66410 et seq. Generally, that body of law requires the submission of a "tentative tract map" for subdivisions of five parcels or more. See Government Code Section 66412.5. The tentative tract map is the subject of discretionary approval, by the Planning Commission. It also may be appealed to the City Council. Gov't Code § 66452.5. Items considered in this review are listed in Government Code Sections 66473 et seq.

Further, the City conducts a "Site Plan Review" which also is discretionary, and occurs at the Planning Commission level. Site Plan Reviews can also be appealed to the City Council. The findings which the approving agency must make in connection with site plan approval, and the criteria applied to same, are codified in Section 20.52.050 of the Signal Hill Municipal Code. A copy of this ordinance is attached.

Mr. John Wallace, Esq.
California Fair Political Practices Commission
February 24, 1989
Page 2

You have also requested information about the leasehold interest of Planning Commissioner Harris and Councilmember Ceccia. First, please be advised that Councilmember Ceccia is part owner of a single-family residence located on Stanley Avenue. This single family residence is rented out by Mr. Ceccia, and is income property. Mr. Ceccia's residence is located in one of the four apartment units at the Junipero address indicated in our previous letter. This should correct misstated information provided previously, although since both properties are within the 2,500 foot radius, I doubt that it will impact your analysis. Mr. Ceccia's leasehold in the apartment complex is month-to-month. Further, Mr. Richard Harris, who also leases property, has a month-to-month tenancy.

I hope this clears up any questions that you have with regard to our analysis. I appreciate your representation that you will make all efforts to have a response to us in time for the March 14, 1989 Planning Commission meeting. Thank you for your time and attention to this advice request.

Very truly yours,

RUTAN & TUCKER


David B. Cosgrove

DBC:jl

Enclosure

cc: City Manager

Honorable Mayor and Members of the City Council

Honorable Chairman and Members of the Planning
Commission

8/159/065121-0001/005

D. Appeals to Planning Commission. Except as otherwise provided in subsection B, the applicant or any aggrieved party may appeal to the planning commission a decision of the director of the department of planning and community development to deny or conditionally approve an application for site plan or design review by filing an appeal in writing with the director of the department of planning and community development within seven calendar days following the date of written notification to the applicant of the director's decision. If a timely appeal is not filed, the director's decision shall be final. The planning commission shall hear the matter at their next regularly scheduled meeting at which the matter can be heard. Notice of the hearing on the application for site plan or design review shall be given as provided in subsection F of this section. The planning commission may sustain, modify, or overrule the decision of the director. In so doing, the planning commission shall make the findings and apply the standard of review contained in Section 20.52.050. The determination of the planning commission shall be final unless an appeal to the city council is timely filed.

E. Appeals to City Council. The applicant or any aggrieved party may appeal to the city council any decision of the planning commission on an application for site plan and design review by filing an appeal in writing with the city clerk within seven calendar days of the planning commission meeting at which the decision on the application was made. The city council shall hear the matter at their next regularly scheduled meeting at which the matter can be heard. Notice of the hearing on the application for site plan or design review shall be given as provided in subsection F of this section. The city council may sustain, modify, or overrule any decision of the planning commission. In so doing, the city council shall make findings and apply the standard of review set forth in Section 20.52.050. The decision of the city council shall be final.

F. Whenever notice of a planning commission or city council hearing on a site plan or design review application is required by this section, such notice shall be sufficient if given in writing by first class mail, at least seven days prior to the date of the hearing, to the applicant and those property owners as shown on the last equalized assessment roll, whose property is within a one-hundred-foot radius of the boundary of the subject property. (Ord. 85-09-955 §6: Ord. 82-6-892 §1(part)).

20.52.050 Findings and standard of review. A. Findings. In approving or conditionally approving a site plan and design review application, the director, the planning commission or city council, as the case may be shall find that:

1. The proposed project is in conformance with the general plan, zoning ordinance, and other ordinances and regulations of the city;

2. The proposed project is in conformance with any redevelopment plan and regulations of the redevelopment agency and any executed owner's participation agreement or disposition and development agreement;

3. The following are so arranged as to avoid traffic congestion, to ensure the public health, safety, and general welfare, and to prevent adverse effects on surrounding properties:

- a. Facilities and improvements,
- b. Pedestrian and vehicular ingress, egress, and internal circulation,
- c. Setbacks,
- d. Height of buildings,
- e. Signs,
- f. Mechanical and utility service equipment,
- g. Landscaping,
- h. Grading,
- i. Lighting,
- j. Parking,
- k. Drainage;

4. The topography is suitable for the proposed site plan and the site plan, as proposed, is suitable for the use intended;

5. The proposed development provides for appropriate exterior building design and appearance consistent and complementary to present and proposed buildings and structures in the vicinity of the subject project while still providing for a variety of designs, forms and treatments.

B. Site Plan and Design Review Criteria. In reviewing any site plan or design review application pursuant to the requirements of this chapter, the director of the department of planning and community development, the planning commission, or the city council, as the case may be, shall utilize the following criteria:

1. The overall development plan achieves and integrates land and buildings relationships, architectural unity, and environmental harmony within the development and with surrounding properties;

2. Structures sited in hillside areas respect the topography, minimize alteration to natural land forms, and retain minimized interference with the privacy and views of surrounding property, retaining courtyard views whenever possible;

3. Exterior building treatments are restrained, not harsh or garish, and selected for durability, wear characteristics, ease of maintenance, and initial beauty. All exterior treatments are coordinated with regard to color, materials, architectural form and detailing to achieve design

harmony and continuity. Exposed metal flashing or trim should be anodized or painted to blend with the exterior colors of the building;

4. Rooflines on a building are compatible throughout the development and with surrounding development;

5. Buildings and related outdoor spaces are designed to avoid abrupt changes in building scale. The height and bulk of buildings are in scale with surrounding sites and do not visually dominate the site or call undue attention to buildings. Structures higher than two stories emphasize horizontal, as well as vertical appearance, e.g., by the use of projection or recession of stories, balconies, horizontal fenestration, changes in roof levels or planes, landscaping or outdoor structures or detailing, to convey a more personal scale;

6. The development protects the site and surrounding properties from noise, vibration, odor, and other factors which may have an adverse effect on the environment;

7. The design of buildings, driveways, loading facilities, parking areas, signs, landscaping, lighting and other site features shows proper consideration for both functional aspects of the site, such as automobile, pedestrian and bicycle circulation, and the visual effect of the development on other properties, from the view of the public street;

8. The design of accessory structures, fences and walls is harmonious with main buildings. Insofar as possible, the same building materials are used on all structures on the site;

9. Proposed signs, and the materials, size, color, lettering, location and arrangement thereof, are an integrated part of and complementary to the overall design of the entire development;

10. Landscaping, where required, is incorporated in such a way as to complement the overall development, enhance visual interest and appeal, and soften bolder architectural features. Landscaping materials and arrangements minimize maintenance and irrigation, and consist of a combination of trees, shrubs and groundcover;

11. Mechanical and utility service equipment is designed as part of the structure or is screened consistent with building design. Large vent stacks and similar features should be avoided, but if essential, are screened from view or painted to be nonreflective and compatible with building colors;

12. Natural space-heating, cooling, ventilation and day lighting are provided, to the extent possible, through siting, building design and landscaping. Deep eaves, overhangs, canopies and other architectural features that provide shelter and shade should be encouraged;

13. Proposed lighting enhances building design and landscaping, as well as security and safety, and does not create glare for occupants on adjoining properties;

14. Drainage is provided so as to avoid flow onto adjacent property;

15. On new development, all utility facilities are underground;

16. Adequate provisions are made for fire safety;

17. All zoning ordinance development standards are met. (Ord. 85-09-955 §7: Ord. 82-6-892 §1(part)).

20.52.060 Expiration and revision. A. Following the completion of the review procedure set forth in Section 20.52.040, the approved site plan, with any conditions shown thereon or attached thereto, shall be dated and signed by the director of planning and community development with one copy mailed to the applicant. Construction of the improvements set forth in the approved site plan shall be commenced within one year from the date the approved site plan is signed by the director. Thereafter, the site plan and design review approval shall expire and become null and void.

B. Any changes or revisions to an approved site plan shall be subject to approval in accordance with this chapter. (Ord. 82-6-892 §1(part)).

20.52.070 Required dedications and improvements. A. If the director of the department of planning and community development, the planning commission, or the city council finds that the development of the property subject to site plan and design review will increase vehicular traffic in that area, the director of the department of planning and community development, the planning commission, or the city council may require as a condition to the approval of a site plan that an applicant provide the following street dedications and improvements reasonably in proportion to increased vehicular traffic which the director of the department of planning and community development, planning commission, or the city council determines is caused by development on the subject property:

1. When the development borders or is traversed by an existing street, the following may be required:

a. Minor Streets, Local Streets, and Culs-de-sac. Dedication of all necessary rights-of-way to widen the street to its ultimate width determined by the city in accordance with city ordinances and regulations; installation of curbs, gutters, sewers, drainage, street lighting, street trees, sidewalks, street signs, water mains, driveways approaches and required utilities; and grading and improving from curb to existing pavement;

RUTAN & TUCKER

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CENTRAL BANK TOWER, SUITE 1400

SOUTH COAST PLAZA TOWN CENTER

611 ANTON BOULEVARD

POST OFFICE BOX 1950

COSTA MESA, CALIFORNIA 92628-1950

A. W. RUTAN (1880-1972)
JAMES B. TUCKER, SR. (1888-1950)
MILFORD W. DAVIS, SR. (1909-1981)
- RODGER HOWELL (1925-1981)

TELEPHONE (714) 641-5100
(213) 625-7586

TELECOPIER (714) 546-9035

TELEX 910 596-1883
CABLE ADDRESS RUTAN TUC CSMA

February 14, 1989

IN REPLY PLEASE REFER TO

GARVIN F. SHALLENBERGER* MARK B. FRAZIER
JAMES R. MOORE* KARIN T. KROGIUS
WILLIAM R. BIEL THOMAS J. CRANE
RICHARD A. CURNUTT BRUCE A. ZMARD
LEONARD A. HAMPBL JAMES J. LITTLE
JOHN B. HURLBUT, JR. DUKE F. WAHLQUIST
MICHAEL W. IMMELL M. KATHERINE JENSON
MILFORD W. DAHL, JR. JANET L. MACLACHLAN
THEODORE I. WALLACE, JR.* SCOTT R. PINZONE
RONALD P. ARRINGTON* MARY K. BARNES
RICHARD P. SIMS RICHARD G. MONTEVIDEO
MARSHALL M. FEARLMAN* DAVID B. COSGROVE
ROBERT C. BRAUN MARK SMITH FLYNN
ROGER A. GRABLE* CAROLE STEVENS
EDWARD D. SYBESMA, JR.* LORI BARNER SMITH
THOMAS S. SALINGER* JAMES P. FINERTY
ROBERT W. ALBERTS ERNEST W. KLATTE, III
WILLIAM V. SCHMIDT* ELIZABETH M. COWLES
DAVID C. LARSEN* KIM D. THOMPSON
CLIFFORD E. FRIEDEN JAYNE DAWOWSKY TAYLOR
MICHAEL D. RUBIN JEFFREY WERTHEIMER
IRA G. RIVIN* HANS VAN LIGTEN
JEFFREY M. ODERMAN* MATTHEW K. ROSS
JOSEPH D. CARRUTH MICHAEL D. TURNER
STAN WOLCOTT* ANDREA R. CALEM
ROBERT S. BOWER J. RUSSELL TYLER, JR.
DAVID J. ALESHIRE ROBERT O. OWEN
MARCIA A. FORSYTH BARRY L. ADAMS
WILLIAM M. MARTICORENA ADAM N. VOLKERT
JAMES L. MORRIS JEFFREY A. GOLDFARB
ANNE NELSON LANPHAR SANFORD SHATZ
WILLIAM J. CAPLAN PATRICK K. HANLY
MICHAEL T. HORNAK CARL J. THOMAS
JANICE L. CELOTTI STEVEN W. SPRECHER
PHILIP D. KOHN ROBERT YONOWITZ
JOEL D. KUPERBERG RONI D. JACKSON
STEVEN A. NICHOLS MATTHEW P. SEEBERGER
THOMAS G. BROCKINGTON MELANIE C. EYRE
WILLIAM W. WYNDER CHESTER A. PUCHALSKI
EVRIDIKI IVICKII DALLAS F. KEVIN BRAZIL
RANDALL M. BABBUS ROBYN L. MOSMAN
MARY M. GREEN LAYNE H. MELZER
PHILIP M. PRINCE PATRICK K. RAFFERTY
JOHN L. FELLOWS III DANA B. TASCHNER
DAVID H. HOCHNER L. SKI HARRISON

*A PROFESSIONAL CORPORATION

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95814-0807

Attn: Mr. John Wallace, Esq.

Dear Mr. Wallace:

This letter is sent pursuant to Government Code Section 83114(b), to request advice and certain rulings on a number of pending situations which may present conflict of interest questions for councilmembers and planning commissioners in Signal Hill. I understand that under Government Code Section 83114(b), your advice will be rendered within 21 working days. The issue related below regarding the Sponberg Kirkland development project involves possible conflicts in connection with a developer's tentative tract map, whose application is already complete. The Planning Commission must act on this map at its next regular meeting on March 14, 1989, or the map will be deemed approved by operation of law. Your prompt response is therefore required to determine who may participate in reviewing this map, and will be most appreciated.

The issues here center on a new regulation specifying criteria for materiality of financial effects, particularly Title 2, Cal. Admin. Code Section 18702.3¹. That regulation sets certain distance classifications for determining materiality of financial effects on real property indirectly

1

All references to the FPPC regulations appearing in Title 2 are cited simply as "Regulations" herein.

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 2

affected by governmental decisions. It also provides value thresholds for determining materiality of effects on property up to 2,500 feet from the boundaries of the area which is the subject of the decision.

Application of these standards has caused certain frustration and confusion, particularly in this smaller, largely undeveloped community. As you may be aware, Signal Hill is a city only 2.25 square miles in area. It has an estimated total population of 8,423, and contains some 3,816 dwelling units, 3,594 of which are occupied.² Since the City lies in the middle of one of Southern California's oldest and best known oil fields, much of the land in the City is vacant, including most of the top of the "hill." During a two-year development moratorium the City formulated a new General Plan which significantly down-zoned much of the City. Now that the moratorium is expired, development pressure to in-fill is increasing, and will present the City with many significant development issues.

The City has a five-person City Council and a five-person Planning Commission, all of whose members are required to reside within city limits. The Planning Commission is required by local ordinance to give initial review approval to any proposed change in zoning, and only after its approval does the ordinance go to City Council. The Planning Commission has approval authority on discretionary land use entitlements such as tentative tract maps, site plans, etc. Site Plan approval involves discretionary review of the location of buildings, access ways, building elevations, signs, lighting, landscaping and other features of the project for construction of new industrial or commercial buildings, and residential projects of more than three dwelling units. All discretionary land use decisions can be appealed to the City Council, but if not appealed, Planning Commission decisions are final.

Questions have arisen in connection with zoning amendments and land use decisions where one or more, and sometimes all, of the members of the decision making body have a financial interest in property within 2,500 feet of the boundaries of land which is the subject of a decision. The regulation classifies impacts on those within 300 feet as automatically material, and treats those between 300 and

² These figures are estimated as of January 1, 1988, by the Los Angeles County Department of Regional Planning.

RUTAN & TUCKER
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 3

2,500 feet uniformly for purposes of analysis. Does this represent an administrative interpretation that impacts are uniform within 300 feet, and between 300-2,500 feet? If so, are all the persons within those radii considered to be affected "in substantially the same manner" for purposes of a "significant segment" analysis under Regulations section 18703? Also, what is the group of "affected persons" on a decision, such as adoption of a master plan for parks, which is City-wide in effect, but by the location of specific facilities and open space areas, may impact some immediate areas more heavily than the City as a whole? We pose these broader issues in the hope that your response will be framed not only for our specific questions, but also be broad enough that we can avoid making repeated requests for advice as future issues arise.

Before identifying the specific questions, it is appropriate to discuss the interests in real property owned by the affected councilmembers and commissioners. Attached is a Signal Hill zoning map showing the locations of the officials' properties and the proposed developments. The officials' properties are their personal residences except for the property owned by Councilmember Ceccia at Junipero, which is income property, and the property of Councilmember Dare, who both resides and conducts his business from the Ohio property. The officials' properties are summarized as follows:

| <u>Official</u> | <u>Address</u> | <u>Zoning</u> | <u>Use</u> | <u>No. Units In Project</u> | <u>No. Units Currently Permitted</u> |
|---------------------|---------------------------|---------------|---|---------------------------------|--|
| <u>City Council</u> | | | | | |
| Ms. Hanlon | 2700 Panorama Drive | SP-2 | Condominium | 26 | 16 |
| Mr. Goedhart | 2051 Orizasa Avenue | RL | Condominium | 22 | 6 |
| Mr. Dare | 3132 Ohio Avenue | RL | Single-Family; Nonconforming Business | 1 | 2 |

RUTAN & TUCKER
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 4

| | | | | | |
|-----------------|------------------------|-------|--------------------------------------|---|---|
| Ms. Black-smith | 3240 California Avenue | RLM-2 | Single Family | 1 | 2 |
| Mr. Ceccia | 1815 Junipero Avenue | CG | Apartments-Rented as income property | 4 | 0 |
| Mr. Ceccia | 2048 Stanley | RLM-1 | Single-Family-Leasehold | 1 | 1 |

Planning Commission

| | | | | | |
|---------------|-------------------------|-------|-----------------------------|---|---|
| Mr. Noll | 1995 Molino Avenue #301 | RH | Condominium | 9 | 5 |
| Mr. McManus | 2685 East 21st St. | RL | Condominium | 4 | 1 |
| Ms. Churchill | 1979 Raymond Ave. | RLM-2 | Single-Family | 1 | 2 |
| Dr. Ross | 2400 East 23d St. | RL | Condominium | 9 | 2 |
| Mr. Harris | 2058 Terrace Dr. | RLM-1 | Leasehold on half of Duplex | 2 | 1 |

The RL Zone is residential, low density, allowing no more than 1 unit per 4,300 square feet. It comprises some 20 total acres, or 1.5% of the City's total area, and currently contains 150-200 dwelling units. The SP-2 is the Hilltop Specific Plan zone, controlled by the Specific Plan adopted for the area. It covers some 30 acres and has approximately 450 units. RLM-1 is residential, low to medium density, under which 1 unit per 6,000 square feet may be developed. RLM-2 is the same, but with a density allowance of 2 units per 5,000 square feet. RH zoning is for high density residential, and allows up to 1 unit per 2,100 square feet. The CG zone is for general commercial uses, and permits no residences.

One more point bears emphasis. The residential properties of Councilmembers Hanlon and Goedhart, and those of Planning Commissioners Noll, Ross and McManus are all

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 5

nonconforming uses. Each of these officials has a financial interest in property developed at density allowances which have subsequently been reduced. Each of these officials' properties have more units than are permitted under current zoning. The residences are legal, nonconforming uses, but under local ordinance such uses cannot be modified, altered, or enlarged without loss of nonconforming status.

Councilmember Ceccia similarly owns an apartment complex in a zone now designated only for commercial uses, which he rents out for income purposes. This property is subject to the same nonconforming use ordinance, and its constraints. Finally, Councilmember Dare's residence property is also his business location, and is in an exclusively residential zone. This business is therefore nonconforming; the residence is not.

In sum, only the properties of Councilmember Dare, Commissioner Churchill and Councilmember Blacksmith (who lives in the north end of town and clearly has no financial interest) can be developed with increased residential densities.

Given these parameters, we would request your advice to the specific situations set out below:

(1) A developer, Kaufman and Broad, has proposed a 50 unit single family subdivision development in the City's RL zone. The project site is marked "K & B" on the enclosed map. The proposal involves only site improvements; no new or substantially improved services are likely to result to existing residents. In addition to Subdivision Map Act filings, the developer requests zoning changes in development standards to lessen required lot depths, and raise permissible building height from 26 to 28 feet. The zoning changes are limited to the RL zone.

The properties of two Councilmembers, Mr. Dare and Mr. Goedhart, are within 300 feet of the proposed development. Four of the five Planning Commissioners (Mr. Mike Noll, Dr. Alan Ross, Mr. Jack McManus, and Ms. Carol Churchill) own property within a radius between 300 and 2,500 feet from the project. The sole remaining Planning Commissioner (Mr. Richard Harris) leases property within this radius. In addition, two of the three remaining

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 6

Councilmembers, Mayor Hanlon, and Mr. Richard Ceccia, own property within the 2,500 foot radius, and Mr. Ceccia has a leasehold interest in this area. However, only Councilmembers Goedhart and Dare and Commissioners McManus and Ross, are within the RL zone. These properties are charted on the map.

Two issues arise here:

(a) Must any of the above-named officials disqualify themselves from participating in tentative tract map, site plan, or their discretionary land use entitlement proceedings?

(b) Must any of the officials disqualify themselves from consideration of the requested amendment in RL zone development standards?

(2) A second developer, Spongberg Kirkland, has proposed a 55 unit single family residential project, also in the RL zone and designated "S & K" on the attached map. This project is located close to the Kaufman and Broad proposed site; the same officials listed above are also within 300 feet, or between 300 and 2,500 feet, of this project.³ No zoning change is requested. Must any of the officials disqualify themselves from participating in tentative tract map, site plan, or other discretionary land use entitlement proceedings? Is the analysis any different from that above and is there any importance to the fact that the projects are both being considered and cumulatively may have a more significant impact in the area?

(3) The City is preparing a Master Parks Plan, which identifies various locations around the City as sites for new parks or open space areas, or areas for park improvements. The Master Plan currently provides different alternatives as to levels of park improvements, depending on the amount of funding provided. The Master Plan will become a part of the General Plan and the desired alternative will be

³ Approximately 300-325 dwelling units are within 300 feet of both the Kaufman & Broad and Spongberg Kirkland projects. Approximately 675-725 dwelling units are within 2,500 feet.

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 7

selected after a public hearing process. Although the plan is city-wide, some park facilities are planned in close proximity to officials' residences, as designated on the option diagrams enclosed.

To implement this plan, the City will consider a Quimby Act ordinance. That ordinance will set fees which developers must pay as conditions to development. The fees will be used for park acquisition and improvement. The ordinance will apply equally to every developer in the City, and the Master Parks Plan envisions an integrated, city-wide park system, but the parks to be established will be closer to some residents, and officials, than others. Must any officials who have interests in property within the specified distances to these planned parks disqualify themselves from considering the Parks Master Plan or Quimby Act ordinance?

(4) The City has designated a specific plan area, the Hilltop Specific Plan, zoned SP-2. One council member, Ms. Hanlon, lives within the area, and one Planning Commissioner, Dr. Ross, lives immediately adjacent. Other officials have financial interests in property in various degrees of proximity, as indicated on the enclosed map.

No specific plans for developing this area are pending. Still, it is possible that a development agreement will be proposed between a developer and the City for the hilltop, including the area zoned SP-2 and portions of the RL zone. The agreement would involve the City guaranteeing certain density or other entitlements in exchange for the developer financing various public improvements, including circulation improvements such as streets. Such an agreement would be comprehensive and control development of the entire hilltop area. Must any of the officials identified above disqualify themselves in considering such an agreement? Additionally, how does one determine when "new or substantially improved services" are "received" by property owners within, adjacent to, or somewhat removed from the designated area, and how does this differ from benefits "received" city-wide?

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 8

(5) The City needs a new water reservoir, and one of the financing mechanisms for the improvement may be an assessment district. The boundaries of such a district are currently unknown, as are the amounts of any assessment. What guidelines must the City observe in determining which officials may have a disqualifying financial interest in property that may be affected if this financing alternative is chosen?

Each of these situations focus on the difficulty the regulations create in identifying indirect benefits to property tangentially affected by a decision, quantifying them, and then determining whether their effect is uniform throughout the area the regulation designates as subject to materiality tests. This uniformity question is critical for determining the group of persons affected in "substantially the same manner" to determine if the effect is shared by a "substantial segment" of the public generally. (Regulations Section 18703.)

Analysis of these situations starts with Government Code Section 87100, which prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. All city Councilmembers and Planning Commission members are "public officials" by statutory definition. (Gov't Code § 82048.) Further, each of the situations described above poses a "governmental decision" as defined by Regulations Section 18700(b). Each of the officials has an investment in the residences in question which exceeds \$1,000.

For those officials who reside in the RL district (Councilmembers Goedhart and Dare, and Planning Commissioners McManus and Ross) the zoning decision originally requires analysis under Regulations Section 18702.1(a)(3)(A). The proposed changes here involve only reducing the minimum lot depth and increasing building heights by some two feet. Consequently, Subsection (E) of that same Regulation excludes such changes from the terms "zoning" and "rezoning" as used therein. The Regulations are silent as to whether this constitutes an administrative determination by the FPPC that such decisions simply do not create material financial effects. If so, the analysis need go no further. If not, focus would appear to shift to Regulations Section 18702.3.

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 9

Two subsections of that regulation might pertain. As to officials within the RL zone, Subsection (c) relates to decisions for which the boundary distances provided in Subsections (a) and (b) cannot readily be calculated. Subsection (c) incorporates the monetary tests of Subsection (b), i.e., fair market value increase or decrease of \$10,000, or rental value increase or decrease of \$1,000 annually. Because the changes are limited to the RL zone, officials whose residences are outside of the zone would not appear to be affected by the zoning changes, even if they are within 300, or 2,500, feet of the boundaries of the zone. The zone change would not appear to have any financial effect on such property, and therefore the officials have no apparent disqualifying interest under Regulations Section 18702.3(a)(1).

For officials within the RL zone, the question turns on the value impact of the proposed zone change. Each of these properties is already developed, such that decreases in minimum lot depth would have minimal impact. As to building height, the FPPC previously has determined that easing these standards can create a \$10,000 or more impact, because of the possibility of adding square footage to properties. (See Flynn Advice Letter, No. I-88-250, p. 7.) One may question whether a homeowner would make the investment required for major structural changes merely to raise a roof by two feet. Moreover, for those officials whose properties are currently nonconforming uses, such reconstruction is impossible. Nonconforming use constraints forbid any alteration or additions to nonconforming structures, and as such no financial benefit from that construction could inure to these properties.

Finally, the proposed zoning amendment will affect all RL properties within the City uniformly. It therefore must be determined whether this group is sufficiently large in numbers, and heterogeneous in quality, to constitute a "significant segment" of the public generally. (In re Ferraro (1978) 4 FPPC Ops. 62, 67.)

The discretionary land use approvals on both Kaufman and Broad and Spongberg Kirkland present similar questions. Notwithstanding the similarity of issues, however, each project is being processed separately, presenting the question whether the effects of each within the prescribed radii must be separately assessed.

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 10

Under Government Code Section 87103(b), one must determine if the project will create a "reasonably foreseeable" effect which will be "material." Regulations Section 18702.3(d)(3) seems to combine these two, directing attention to whether the decision will result in a change of the character of the neighborhood, including effects on traffic, view, privacy, intensity of use, noise levels, etc. Here, each project will add approximately 50 more residences to the City's current total of 3,816. Foreseeable effects are probable on immediately adjacent landowners, such as Councilmember Goedhart. The foreseeability clouds significantly as one moves further away from the boundaries of the project, however.

If the FPPC determines that effects from the projects are foreseeable even 2,500 feet away, it must determine whether these effects are "material." This appears to be a valuation question, i.e., whether the projects will increase or decrease rented properties by \$250 yearly (Regulations Section 18702.4) or the fair market value of owned residences by \$10,000, or rental value by \$1,000 yearly. (Regulations Section 18702.3.) Previous opinions have recognized effects on adjacent landowners, but all deal with larger areas targeted for commercial or other improvements. (See, e.g., In re Owen (1976) 2 FPPC Ops. 77; In re Brown (1978) 4 FPPC Ops. 19.) The effects of commercial revitalization would appear to be stronger, and consequently more material, than those of residential subdivision development.

If the FPPC determines material effects are foreseeable, there remains the issue whether the officials are affected in the same way as a significant segment of the public generally. Regulations Section 18702.3 makes certain quasi-legislative judgments, treating those within a 300 foot radius one way, and those between 300 and 2,500 feet another. May one assume, therefore, that all affected parties within these radii may be considered equal in terms of their effect? The FPPC almost universally holds that the "public generally," against which a segment must be judged to determine if it is "significant," is the entire jurisdiction of the decisionmaking body, here to the entire City. (In re Owen (1976) 2 FPPC Ops. 77, 81.) With each of these projects, is the group compared to entire City all properties located within 300, or 2,500, feet of the project up for decision? Is it the entire group of residences at the same radius from the project as the public official whose interest is being examined for conflict? If a presumption of uniform

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 11

effect throughout these distances is not permitted, what criteria are appropriate for distinguishing among those within the class?

The Master Parks Plan and Quimby ordinance issues center primarily on foreseeable effects and the significant segment analysis. Particularly, the question is whether one views the city-wide nature of the ordinance, and its uniform effect on all developers, or rather presumes the ultimate intention of the ordinance, to construct parks. If the former, any effect on any participating official would appear to be identical with that on city residents generally. (This assumes no official is in the development business, which is the case.) On the other hand, if adoption of the Master Parks Plan is deemed the functional equivalent of deciding actually to construct parks, there may be some financial effect on adjacent or nearby properties. The question then becomes whether a party adjacent to a city park is affected differently from the public generally. The FPFC has once ruled that a planning commissioner whose residence abutted a redevelopment "core area" was not affected differently from the general public, on a similar planning decision. (In re Owen, supra, 2 FPFC Ops. 77, 81.) Here, any increase in value to residences neighboring on parks would likely to be shared with other residential properties, and perhaps throughout the entire city, as was the finding in Owen.

The development agreement question raises issues under Regulations Section 18702.3(a)(2). The effects of such an agreement are at this time more difficult to assess, because they are speculative. We believe such a development agreement would have a significant impact in the hilltop and on land values both on the hilltop and in adjacent areas. In addition, we would appreciate what guidance you might offer as to how to determine when a particular improvement provides "new or substantially improved services" to any adjacent property.

Finally, it appears reasonably well established that a decision creating an assessment district, in which the official's property is directly assessed and shares in the benefits, creates a material financial interest. (In re Sankey (1976) 2 FPFC Ops. 157, 160; In re Brown (1978) 4 FPFC Ops. 19, 21.) If the improvement serves the entire city's water system, however, how is one to determine the foreseeability or materiality of a financial effect to properties within 300 or 2,500 feet of the boundaries

RUTAN & TUCKER
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Fair Political Practices Commission
Attention: Mr. John Wallace, Esq.
February 14, 1989
Page 12

established for the assessment districts? Similarly, questions as to whether one may presume a homogeneous effect on persons within those radii may possibly be determinative as to whether the effect on a given official is substantially similar to that on a significant segment of the public generally.

In connection with the foregoing, for any case in which you conclude that more than two members of the decision-making body are disqualified, please discuss the rule of necessity. An ordinance (i.e.. a zoning amendment) requires three council votes to be adopted. If three members are disqualified, how should the third participant be selected. With regards to the Site Plan approval, the matter can be approved by a majority of a quorum. If three members are disqualified, would one participate only to constitute a quorum, but not participate in discussions or voting?

I hope this analysis proves helpful to you in determining the questions now presented for advice. If any of the facts are unclear, or if further information is required, please do not hesitate to contact me directly. Again, because of the press of Subdivision Map Act and other schedules, your prompt attention to this request will be most appreciated. Thank you for your time and consideration, and I look forward to hearing from you soon.

Very truly yours,

RUTAN & TUCKER



David B. Cosgrove

DBC:jl
Enclosure

8/159/065121-0001/006



California Fair Political Practices Commission

March 7, 1989

David B. Cosgrove
Rutan and Tucker
Central Bank Tower, Suite 1400
South Coast Plaza Town Center
611 Anton Blvd.
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Letter No. 89-120

Dear Mr. Cosgrove:

Thank you for sending the additional information. Pursuant to our telephone conversation of March 2, 1989, I will be responding to your advice request in two separate letters. The first letter will respond to your questions number one and number two. We will make every effort to have this response to you before March 14, 1989.

The second letter will respond to your remaining questions. We will be treating these questions as a separate advice request. We try to answer all advice requests promptly. Therefore, unless more information is needed, you should expect a response within 21 working days, or by March 21, 1989.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, appearing to read "John W. Wallace", is written over the typed name.

By: John W. Wallace
Counsel, Legal Division

DMG:JWW:plh



California Fair Political Practices Commission

February 22, 1989

David B. Cosgrove
Rutan & Tucker
Central Bank Tower, Suite 1400
South Coast Plaza Town Center
611 Anton Boulevard
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Letter No. 89-120

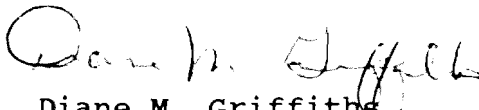
Dear Mr. Cosgrove:

Your letter requesting advice under the Political Reform Act was received on February 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.))

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Diane M. Griffiths
General Counsel

DMG:plh